Case Archive

# Case 1.1 Accountability: Waterboarding, the CIA, and Government Contractors

On February 7, 2008, the House Permanent Select Committee on Intelligence held its annual hearing to assess the threats that the nation faced around the world. In the middle of the hearing, Rep. Jan Schakowsky (D-Ill.), questioned Central Intelligence Agency (CIA) Director Michael V. Hayden about the use of waterboarding on individuals suspected of plotting terrorism against the United States.

The technique, in which interrogators pour water over the hooded heads of suspects in a way that simulates drowning, came under harsh attack in the years after the September 11 attacks. Critics argued that the technique amounted to torture and should not be used by the United States, regardless of the danger. Proponents argued that it was not torture and that it constituted a reasonable approach to questioning individuals who might have knowledge about pending terrorist attacks on Americans.

In the midst of the questioning came a huge surprise. Not only did Hayden publicly reveal that the CIA had used waterboarding, but he also said that contractors—nongovernmental employees hired to work for the government—had been involved in the government’s interrogation programs. Moreover, he thought that the contractors had participated in the waterboarding, but he was not sure.

Here is the transcript of their conversation:[[1]](#footnote-1)

REP. SCHAKOWSKY: So are you saying, you know, you had harsh interrogation techniques that are often justified by this ticking-time-bomb scenario that, you know attacks are imminent? But why has the CIA employed harsh interrogation techniques, even once those immediate, imminent threats have passed?

GEN. HAYDEN: Well, all the techniques that we’ve used have been deemed to be lawful. We used waterboarding on three individuals under what were fairly unique historic circumstances: number one, a belief across the community that further catastrophic attacks were imminent; number two, an admittedly weak understanding of the workings of al Qaeda. No, those two situations do not pertain at the current time. The third leg of the stool, on which we stood at that point in time, was the inherent lawfulness of the activity. Now, all three of those things have changed. We have far more knowledge of al Qaeda. And although the threat continues, the imminence of the attack is not apparent to us.

REP. SCHAKOWSKY: Okay, my time is ticking away. . . . Are contractors involved in CIA detention interrogation programs?

GEN. HAYDEN: Absolutely.

REP. SCHAKOWSKY: Were contractors involved in the waterboarding of al Qaeda detainees?

GEN. HAYDEN: I’m not sure of the specifics. I’ll give you a tentative answer: I believe so. And I can give you a more detailed answer—

REP. SCHAKOWSKY: And are they bound by the same rules enforced for other government personnel?

GEN. HAYDEN: They are bound by the same rules enforced for the Office of the Central Intelligence Agency.

REP. SCHAKOWSKY: Thank you.

# Questions to Consider

Do you believe that the government should allow harsh interrogation techniques such as waterboarding? Note that Congress has delegated substantial power to the CIA, but it has neither approved nor denied the CIA’s power to use this technique.

How can—and should—CIA employees be held accountable for the use of such power?

Do you think it matters, in answering question 2, whether the individual performing the waterboarding is a CIA employee or a private contractor?

Do you think it matters that the CIA director was not sure whether or not contractors were the ones performing the waterboarding?

1. House Permanent Select Committee on Intelligence, Annual Worldwide Threat Assessment (February 7, 2008), http://www.fas.org/irp/congress/2008\_hr/020708transcript.pdf. [↑](#footnote-ref-1)